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THE CONSTITUTIONALITY OF A STATUTE PROVIDING FOR PERSONAL SERVICE OF PROCESS OUTSIDE OF A STATE.

The prevailing and dissenting opinions of the Supreme Court of Iowa, upon the question of the constitutionality of a statute authorizing the personal service of process outside of the enacting state, on a citizen of that state, occupy some fifteen pages, in the usual type of the Reporter system. Five of the seven members hold that service under such a statute gives no basis whatsoever for a judgment *in personam*. Raher v. Raher, 129 N. W. 494.

The difference in view arises out of the majority holding, that whatsoever is effected by process in the giving of notice so as to constitute due process of law must be within the borders of the sovereignty where its statute has operation, while the minority contend, that, as to the subjects of a state—its own citizens—due process of law is satisfied by any notice that may reasonably apprise a defendant of a suit against him.

It is not claimed by the majority that personal service on a resident, in the state, is necessary for a personal judgment, but substituted service, as the alternative of that, may suffice, as for example, leaving a summons at the residence with an inmate of the household over a certain age, or even that posting might authorize such a judgment, if a statute so provided.

Neither is it claimed, that the efficacy of substituted service would be at all impaired by the fact that the resident might, at the time it was made, be absent from the State of his domicile, for whatsoever period that absence might continue, *animus revertendi* being the test of its validity. The minority seize on these features to claim, that the rule of intraterritorial operation of statutes finds an exception in the relation between a sovereignty and its subject, wherever the latter may be. They concede that he is entitled to have what the law, within reasonableness, may declare to be notice, in order that the constitutional requirement of due process of law may be complied with, but they deny that the principle of intraterritorial operation of a statute includes, necessarily, "the execution of process."

It seems to us that the minority have in this evolved a sort of metaphysical abstraction which is comprehended in, and not released from, the *absolutely* undeniable principle that there is no inherent vigor in a law outside of the domain of the state whose law it is.

Let us observe the service of process within the state to ascertain whether or not the law goes along with it to make it effectual or otherwise. Some statutes provide a longer or shorter period for the process to be returnable, accordingly as the resident is served in or out of the county of his residence. Also they provide for a certain manner of return of service before the court out of which process issues may proceed. In conforming to the requirements of the statute, its operation at the place of compliance is recognized. As occasion arises to comply with the statute after the process issues it is complied with, or the court cannot proceed.

If a statute is changed after issuance and before service or return of process, which would make a difference in the manner of its service or proof of its being made, we apprehend that, unless such a case were excepted, the new statute would apply. If so, nothing may more clearly demonstrate, that the statute is in operation in "the execution of process."

Take, then, a statute authorizing service of process outside of a state, on a resident, temporarily absent. The manner of service and the proof of its being made is prescribed. Immediately after issuance of the process, a new statute changes this. If it applies, it follows the act of service and the mode of the proof thereof into other territory.

But if a new statute has this effect, it is on the theory that the old statute would

otherwise be *operative* had it not have been *there* displaced.

The minority quote from Black on Judgments, sec. 227 that: "Every sovereignty has plenary control over its own subjects and it may authorize a judgment to be rendered against one of its citizens upon a constructive notice only, and although he is temporarily absent from its dominions, and such a judgment must be everywhere recognized as valid and of binding force and effect." This is true, but *where* must the "constructive notice" be given? Can Missouri say it may be given in Illinois? Suppose it undertook to say defendant could be placarded in Illinois to the effect that a suit had been brought against him in Missouri and it was against the policy of Illinois for any such placarding to be resorted to? Would not the Illinois law control? If so, a Missouri law as to a Missouri resident could be abrogated by Illinois law.

Where the minority are in error is in the supposition, as we conceive their contention, that the statute they are considering is, in effect, a notification to residents, that if personal service is made and proven in a certain way, its courts may recognize it as sufficient, no matter whether such service be within its borders or not.

This theory we think defective for several reasons. In the first place notice that is to be ratified is not notice that is valid when given and such notice is necessary to bring a defendant into court. In the second place, if nothing which the state could originally authorize to be done has been done, there is nothing to ratify.

There are some seeming exceptions to the rule, that the statutes of a state have no extraterritorial operation, but they are only seeming and not so in fact. Thus, take statutes in reference to deeds and their proper execution abroad to make them admissible to registration and the imparting of constructive notice. These are privilege provisions in furtherance of the liberty of contract. So also as to the mode of execution of wills where they are to affect lands, or where they are executed abroad by a resident so as to carry personalty. Here are mere questions of evidence for the domicile of jurisdiction, when there produced.

State constitutions, however, never intended, nor can be contemplated to have intended, that any proceeding *in invitum*, which the law of a state authorizes to be taken, can depend for its efficacy upon the policy of any other state, or that it shall be taken in any place where a sister state may interfere. These sovereigns must revolve in their lawful spheres not only unchallenged, but unchallengeable, one by another.

This consideration regards in no way the question of due process of law under the Fourteenth Amendment. Justice Field was only considering the question of the effect of publication service on a non-resident in the case of Pennoyer v. Neff, 95 U. S. 714. Nevertheless we think he announced what is a principle without exception when he said, if a question "involves merely a determination of the personal liability of the defendant, he must be brought within the jurisdiction of the court by service of process within the state, or his voluntary appearance." A resident is entitled to service of process, personal or substituted, just as absolutely as a non-resident.

NOTES OF IMPORTANT DECISIONS

INTOXICATING LIQUORS—SCHEME BY CLUB FOR DISTRIBUTION TO MEMBERS AS SALE IN PROHIBITION TERRITORY.— Various have been the devices by clubs to distribute liquor, purchased under cover of the interstate commerce clause, among members, as ordered, so as to avoid the distribution being a sale. The device by a North Carolina club for an artistic finish, that won out before the supreme court of that state, occupies a very bad eminence. It, however, barely escaped, as the chief justice and one associate dissented from the reversal of the conviction. State v. Colonial Club, 69 S. E. 771. This scheme was an arrangement whereby the officers of the club were authorized to order for any member of the club beer or other liquor in bottles—have it shipped to the care of the club, which should place it in its refrigerators with beer or other liquors so that all identity of property would be immediately lost. Any

member directing the club to order beer or other liquor was given a book of coupons, each coupon for a bottle of beer, if beer is ordered, and the coupons being for as many bottles as the member, paying in advance to the club, should order. The club deposited this money in bank to its own credit and sent on its check for the aggregate of what was paid into it on orders. When the beer arrived it was served by the club's waiters to members indiscriminately, for coupons.

The majority of North Carolina Supreme Court held that the club was merely a bailee of the liquor and there was no sale, and it was paid as such bailee for storage and service by fees and dues of members. The minority held that title passed to the club and the coupons taken up by it were evidences of indebtedness. It would seem that a device like this should deceive no one. We think it plain that, when the members arranged among themselves, one should not have any right to demand of the club the return to him of the specific property he orders this destroys the relation of bailor and bailee. A bailment is a delivery of goods in trust for the execution of a special object in relation to such goods, and there arises a contract, express or implied, to carry out the object of the bailment and in default thereof to redeliver the goods. The trust here was for the club to mingle goods so that no particular member should have claim to any specific goods, and the club in consideration of the bailment, promised to convey title to the bailor of other bottles of beer. When it redeemed its promise this constituted a sale of those other bottles. It took up a coupon for each other bottle as a credit pro tanto on its promise to transfer to the bailor as many bottles as he had delivered to it. The bailment to the club was to mingle the beer with other beer.

We are aware of the general principle that where there is a confusion of goods by consent the owners become tenants in common of the mixture, but we think this does not apply to this kind of a case, because the club agreed by issuing its coupons in advance of its coming into actual custody of the goods, that it would redeliver absolutely as much property in kind as was paid for by the member. If the members were tenants in common, any loss or depreciation would follow them.

If the club's obligation accrued only upon the goods actually coming into its custody, then if the transfer to the mass was a loss by each member of title to specific property, the member would be guilty of a sale, and the club in redeeming the coupons guilty of another sale. The club would be guilty whether title passed to it before the liquor arrived at destination or afterwards. Its guilt consisted in redeeming its coupons. This question needs to be argued with all technical refinement, for it is only by technicality that escape from criminality is sought. There is abundant authority against such devices blinding justice.

THE ADMINISTRATION OF JUSTICE — ITS SPEEDING AND CHEAPENING.[1]

The chief reason why the State devotes so much time and effort in the administration of justice is to promote the cause of peace and tranquility in the community. Speaking theoretically and ideally of course, our aim is to secure equal and exact justice; but practically, the object sought is peace.

In a Republic like ours, under popular control, with the dual form of government between the states and the United States, politico-legal questions which might tend to bring on conflict between parties and factions among the people were first, the distribution of power under the Federal Constitution between the National Government and the State Governments; second, the division between the executive, the legislative and the judicial branches of the Government, and, third, the limitations upon governmental action either through the National Government or the State Government, in respect to the rights of individuals.

Under our fundamental compact and its subsequent construction by the judicial branch, there was introduced a new and most effective instrument for the promotion of the peaceable settlement of these great governmental political controversies. The decisions in the cases of *Marbury* v.

(1) In answer to our appeal to the President for the opening declaration in the present campaign for reform in procedure, Mr. Taft replied that the argument which he made recently before the Virginia Bar Association represented accurately his views and he sent us the above outline of the argument for reform in procedure that is so remarkable for its candor, simplicity and conservative suggestion, that we have decided to exalt it as the authoritative key-note of this campaign. We ask every lawyer and judge to study it carefully and give us the advantage of many opinions as to the various suggestions which are offered.

Madison, and *Cohen* v. *Virginia*, which in their personal aspect took on the phase of a fundamental difference of opinion between two great Virginians, established the principle in this country, which has never been departed from, that the ultimate arbiter in respect to such great political and legal issues was and is the Supreme Court of the United States. It is true that this unique feature did not save us from the greatest civil war of modern times; but no one at all familiar with the history of the country can deny that this function of the Supreme Court of the United States, and a similar one within the sphere of their jurisdiction, of the Supreme Courts of the states ultimately to decide upon the limitations of legislative and executive power, have greatly contributed to the peace and tranquility of our community. This peculiar power of courts with us has carried their usefulness for the peaceful settlement of controversies beyond anything attempted in other countries. Of course, the exercise of this power must rest on the existence of a written constitution. Without it, there would be no guide for the courts except indefinite traditions that could hardly be made the basis for judicial decision. The power of the courts to declare invalid laws of the legislature we know was not adopted without very bitter opposition; but I think the controversy was settled now so long ago that we generally agree that it has much contributed to the smooth working of our constitution to the supremacy of law and order in our community, and offers great advantages over the methods of settling a similar class of questions in other countries.

While we may properly felicitate ourselves on this widened function of our courts, enabling us to avoid less peaceable methods of settling important politico-legal questions, have we the right to say that our present administration of justice generally insures continued popular satisfaction with its results? I think not. It may be true that down to the present time it has supplied a means of settling controversies between individuals and of bringing to punishment those who offend against the criminal laws sufficient to prevent a general disturbance of the peace and to keep the dissatisfied from violent manifestation against the government and our present social system.

There are, however, abundant evidences that the prosecution of criminals has not been certain and thorough to the point of preventing popular protest. The existence of lynching in many parts of the country is directly traceable to this lack of uniformity and thoroughness in the enforcement of our criminal laws. This is a defect which must be remedied or it will ultimately destroy the Republic.

We will attempt no discussion as to the reforms which ought to be adopted in the criminal branch of our jurisprudence. This has been attempted on another occasion.[2] I wish to confine myself to the delays and inequalities in the administration of justice in controversies between private persons, including, of course, corporations.

The present is a time when all our institutions are being subjected to close scrutiny with a view to the determination whether we have not now tried the institutions upon which modern society rests to the point of proving that some of them should be radically changed. The chief attack is on the institution of private property and is based upon the inequalities in the distribution of wealth and of human happiness that are apparent in our present system. As I have had occasion at other places to say frequently, I believe that, among human institutions, that of private property, next to personal liberty, has had most to do with the uplifting and the physical and moral improvement of the whole human race, but that it is not inconsistent with the rights of private property to impose limitations upon its uses for unlawful purposes, and that this is the remedy for reform rather than the abolition of the institution itself. But this scrutiny of our institutions, this increasing disposition to try experiments, to see whether there is not some method by which human happiness may be more equally distributed than it is, ought to make those

of us who really believe in our institutions as essential to further progress, anxious to remove real and just grounds for criticism in our present system.

I venture to think that one evil which has not attracted the attention of the community at large, but which is likely to grow in importance, as the inequality between the poor and the rich in our civilization is studied, is in the delays in the administration of justice between individuals. As between two wealthy corporations, or two wealthy individual litigants, and where the subject matter of the litigation reaches to tens and hundreds of thousands of dollars, where each party litigant is able to pay the expenses of litigation, large fees to counsel, and to undergo for the time being the loss of interest on the capital involved, our present system, while not perfect, is not so far from proper results as to call for anxiety. The judges of the country, both state and national, are good men. Venality in our judges is very rare; and while the standard of judicial ability and learning may not always be as high as we should like to see it, the provisions for review and for free and impartial hearing are such as generally to give just final judgments. The inequality that exists in our present administration of justice, and that sooner or later is certain to rise and trouble us, and to call for popular condemnation and reform, is in the unequal burden which the delays and expense of litigation under our system imposes on the poor litigant. In some communities I know, delays in litigation have induced merchants and commercial men to avoid courts altogether and to settle their controversies by arbitration, and to this extent the courts have been relieved; but such boards of arbitration are only possible as between those litigants that are members of the same commercial body, and are in a sense associates. They offer no relief to the litigant of little means who finds himself engaged in a controversy with a wealthy opponent, whether individual or corporation.

The reform, if it is to come, must be reached through the improvement in our judicial procedure. In the first place, the codes of procedure are generally much too elaborate. It is possible to have a code of procedure simple and effective. This is shown by the present procedure in the English courts, most of which is framed by rules of court. The code of the State of New York is staggering in the number of its sections. A similar defect exists in some civil law countries. The elaborate Spanish code of procedure that we found in the Philippines when we first went there could be used by a dilatory defendant to keep the plaintiff stamping in the vestibule of justice until time had made justice impossible. Every additional technicality, every additional rule of procedure adds to the expense of litigation. It is inevitable that with an elaborate code, the expense of a suit involving a small sum is in proportion far greater than that involving a large sum. Hence it results that the cost of justice to the poor is always greater than it is to the rich, assuming that the poor are more often interested in small cases than the rich in large ones—a fairly reasonable assumption.

I am reminded of a discussion of this subject of code procedure by that great lawyer, Mr. James C. Carter, of New York. He was the leader of the opposition to the New York code; and had to meet Mr. David Dudley Field, who was its chief supporter. Mr. Carter impressed me with having in that particular discussion the better side, for he showed that under the Massachusetts procedure, which is a retention of the common law forms of action, together with the division between law and equity, with modifications to dispense with the old technical niceties of common law and equity pleading, the decisions on questions of practice and pleading in Massachusetts were not one-tenth of those arising under the code of New York, and his argument was a fairly strong one in support of the contention that it was better to retain the old system and avoid its evils by amendment than to attempt a complete reform. However, it is to be said that a study of the English system, consisting of a few general principles laid down in the practice act, and supplemented by rules of court to be adopted by

the high court of judicature, has worked with great benefit to the litigant, and has secured much expedition in the settlement of controversies and has practically eliminated the discussion of points of practice and pleading in the appellate courts. My impression is that if the judges of the court of last resort were charged with the responsibility within general lines defined by the legislature for providing a system in which the hearings on appeal should be solely with respect to the merits and not with respect to procedure, and which should make for expedition, they are about as well qualified to do this as anybody to whom the matter can be delegated.

This system of delegating questions of procedure to courts has a precedent of long standing in the Supreme Court of the United States, for under the federal statutes that court has to frame the rules of equity to govern procedure in equity in the federal courts of first instance. I may say incidentally that with deference to that great court, it has not given particular attention to the simplification of equity procedure and to the speeding of litigation in federal courts which might well be brought about by a radical change in the rules of equity prescribed by it. It may be and probably is the fact that under the constitutional provision, Congress could not do away with the separation of law and equity cases as has been done in the codes of many of the states. I regret this because such a change makes for simplicity and expedition in the settlement of judicial controversies. It is clear, however, that the old equity practice could be greatly simplified. It has been done in England, and it ought to be done in the federal courts.

One reason for delay in the lower courts is the disposition of judges to wait an undue length of time in the writing of their opinions or judgments. I speak with confidence on this point, for I have been one of the sinners myself. In English courts the ordinary practice is for the judge to deliver judgment immediately upon the close of the argument, and this is the practice that ought to be enforced as far as possible in our courts of first instance. It is almost of as much importance that the court of first instance should decide promptly as that it should decide right. If judges had to do so, they would become much more attentive to the argument during its presentation and much more likely on the whole to decide right when the evidence and arguments are fresh in their mind. In the Philippines we have adopted the system of refusing a judge his regular monthly stipend unless he can file a certificate, with his receipt for his salary, in which he certifies on honor that he has disposed of all the business submitted to him within the previous sixty days. This has had a marvelously good effect in keeping the dockets of the court clear.

It may be asserted as a general proposition, to which many legislatures seem to be oblivious, that everything which tends to prolong or delay litigation between individuals, or between individuals and corporations, is a great advantage for that litigant who has the longer purse. The man whose all is involved in the decision of the lawsuit is much prejudiced in a fight through the courts, if his opponent is able, by reason of his means, to prolong the litigation and keep him for years out of what really belongs to him. The wealthy defendant can almost always secure a compromise or yielding of lawful rights because of the necessities of the poor plaintiff. Many people who give the subject hasty consideration regard the system of appeals, by which a suit can be brought in a justice of the peace court and carried through the other courts to the supreme court, as the acme of human wisdom. The question is asked: "Shall the poor man be denied the opportunity to have his case re-examined in the highest tribunal in the land?" Generally the argument has been successful. In truth, there is nothing which is so detrimental to the interests of the poor man as the right which, if given to him, must be given to the other and wealthier party, of carrying the litigation to the court of last resort, which generally means two, three and four years of litigation. Could any greater opportunity

be put in the hands of powerful corporations to fight off just claims, to defeat, injure or modify the legal rights of poor litigants, than to hold these litigants off from what is their just due by a lawsuit for such a period, with all the legal expenses incident to such a controversy. Every change of procedure that limits the right of appeal works for the benefit in the end of the poor litigant and puts him more on an equality with a wealthy opponent. It is probably true that the disposition of the litigation in the end is more likely to be just when three tribunals have passed upon it than when only one or two have settled it; but the injustice which meantime has been done by the delay to the party originally entitled to the judgment generally exceeds the advantage that he has had in ultimately winning the case.

Generally in every system of courts there is a court of first instance, an intermediate court of appeals and a court of last resort. The court of first instance and the intermediate appellate court should be for the purpose of finally disposing in a just and prompt way of all controversies between litigants. So far as the litigant is concerned, one appeal is all that he should be entitled to. The community at large is not interested in his having more than one. The function of the court of last resort should not primarily be for the purpose of securing a second review or appeal to the particular litigants whose case is carried to that court. It is true that the court can only act in concrete cases between particular litigants, and so incidentally it does furnish another review to the litigants, in that case; but the real reason for granting the general principles of law for the benefit and guidance of the review should be to enable the supreme court to lay down general principles of law for the benefit and guidance of the community at large. Therefore, the appellate jurisdiction of the court of last resort should be limited to those cases which are typical and which give to it in its judgment an opportunity to cover the whole field of the law. This may be done by limiting the cases within its cognizance to those involving a large sum of money, or to the construction of the Constitution of the United States or the states or their statutes. The great body of the litigation which it is important to dispose of, to end the particular controversies, should be confined to the courts of first instance and the intermediate appellate courts. It is better that the cases be all decided promptly, even if a few are wrongly decided.

In our supreme courts the business is disposed of with perhaps as great promptness as is consistent with the purpose of their jurisdiction. The criticism that courts of last resort are too much given to technicality has, I believe, some merit in it. Codes might be drawn, however, giving the courts of review more discretion in this matter than they now do by requiring the party complaining of an error in the trial court to show affirmatively that the result would have been different if the error had not been committed. The difference in importance between an error in the hurly-burly of the actual trial and in the calm of a court of review under the urgent argument of counsel for plaintiff in error and the microscopic vision of an analytical but technical mind on the supreme bench is very great.

The complaints that the courts are made for the rich and not for the poor have no foundation in fact in the attitude of the courts upon the merits of any controversy which may come before them for the judges of this country are as free from prejudice in this respect as it is possible to be. But the inevitable effect of the delays incident to the machinery now required in the settlement of controversies in judicial tribunals is to oppress and put at a disadvantage the poor litigant and give advantage to his wealthy opponent. I do not mean to say that it is possible, humanly speaking, to put them on an exact equality in regard to litigation; but it is certainly possible to reduce greatly the disadvantage under which the man of little means labors in vindicating or defending his rights in court under the existing system, and courts and legislatures could devote themselves to no higher purpose than the elimination from the present

system of those of its provisions which tend to prolong the time in which judicial controversies are disposed of.

The shortening of the time will reduce the expense, because, first, the fees of the lawyers must be less if the time taken is not so great. Second, the incidental court fees and costs would be less.

Again, I believe that a great reform might be effected, certainly in the federal courts, and I think too in the state courts, by a mandatory reduction of the court costs and fees. In the interest of public economy we have generally adopted a fee system by which the officers of the courts are paid. Human nature has operated as it might have been expected to operate, and the court officers, the clerk and the marshal, have not failed, especially in the federal courts, to make the litigation as expensive as possible, with a view to making certain the earning of a sufficient amount to pay their salaries. The compensation of the officers of the court and the fees charged ought to be entirely separate considerations. The losses which the government may have to suffer through the lack of energy in the collection of costs and fees should be remedied in some other way. The salaries of the court officers should be fixed and should be paid out of the treasury of the county, state or national government, as the case may be, and fees should be reduced to as low a figure as possible consistent with a reasonable discouragement of groundless and unnecessary litigation. I believe it is sufficiently in the interest of the public at large to promote equality between litigants, to take upon the government much more than has already been done, the burden of private litigation. What I have said has peculiar application to the federal courts. The feeling with respect to their jurisdiction has been that limited as it is now to cases involving not less than $2,000, the litigation must of course be between men better able to undergo its expense than in causes involving a less amount, and therefore that high fees and costs are not so objectionable in those courts as in the state courts. I think this has been a very unfortunate view and has been one of the several grounds for creating the prejudice that has undoubtedly existed in popular estimation against the federal courts as rich men's courts. In those courts suits for damages for personal injury, of which many are there by removal of defendant, are generally brought by poor persons. Then the expense of litigation in patent cases is almost prohibitive for a poor inventor. It forces him into contracts that largely deprive him of the benefit of his invention. In respect to patent cases much might be done by the supreme court's reforming the equity procedure and the bill of costs.

I think another step in the direction of the dispatch of litigation would be the requirement of higher qualifications for those judges who sit to hear the cases, involving a small pecuniary amount. The system by which the justices of the peace who have to do with smaller cases and who are non-professional men and not apt in the disposition of business, hardly a wise feature of the present system. The poor should have the benefit of as acute and able judges as the rich, and the money saved in the smaller salaries of the judges of the inferior courts is not an economy in the interest of the public. Under able, educated, and well-paid judges who understand the purpose of the law in creating them, I am quite sure that the people's courts as they are called could be made much more effective than they are for the final settlement of controversies.

Another method by which the irritation at the inequalities in our administration of justice may be reduced is by the introduction of a system for the settling of damage suits brought by employes against public service corporations through official arbitration and without resort to jury trials. Such a system is working in England, as I am informed. Under the statute, limitations are imposed upon the recovery of the employee or his representatives proportioned to his earning capacity. The hearing is prompt and the payment of the award equally prompt, and in this way a large

mass of litigation that now blocks our courts would be taken out of our judicial tribunals, and be settled with dispatch. Of course, it would not be proper or possible to prevent the plaintiff litigant from resorting to a jury trial if he chooses, but it is believed that the result would be very largely to reduce the character of such litigation. The truth is, that these suits for damages for injuries to employees and passengers and to trespassers and licensees have grown to be such a very large part of the litigation in each court, both in courts of first instance and in courts of appeal, and involve so much time because of the necessity for a jury trial, that they may be properly treated as a class and special statutory provision for their settlement by arbitration or otherwise be made. These are the cases which create most irritation against the courts among the poor. This is peculiarly true in such cases in the federal courts.

No one can have sat upon the federal bench as I did for eight or nine years and not realize how defective the administration of justice in those cases must have seemed to the defeated plaintiff, whether he was the legless or armless employee himself or his personal representative. A non-resident railway corporation had removed the case which had been brought in the local court of the county in which the injured employee lived, to the federal court, held, it may be, at a town forty or one hundred miles away. To this place at great expense the plaintiff was obliged to carry his witnesses. The case came on for trial, the evidence was produced and under the strict federal rule as to contributory negligence or as to nonliability for the negligence of fellow-servants, the judge was obliged to direct the jury to return a verdict for the defendant. Then the plaintiff's lawyer had to explain to him that if he had been able to remain in the state court, a different rule of liability of the company would have obtained, and he would have recovered a verdict. How could a litigant thus defeated, after incurring the heavy expenses incident to litigation in the federal court, with nothing to show for it, have any other feeling than that the federal courts were instruments of injustice and not justice, and that they were organized to defend corporations and not to help the poor to their rights.

It is gratifying to be able to say that under the Interstate Commerce Employers' Liability Act, much of this occasion for bitterness against the federal courts and their administration of justice will be removed, and I believe it would greatly add to the popular confidence in the federal courts if a federal statute were enacted, by which under proper limitations official arbitration could be provided for settling the awards to employees in such cases arising in the carrying on of interstate commerce. We can not, of course, dispense with the jury system. It is that which makes the people a part of the administration of justice and prevents the possibility of government oppression, by every means by which in civil cases litigants may be induced voluntarily to avoid the expense, delay and burden of jury trials ought to be encouraged, because in this way the general administration of justice can be greatly facilitated and the expense incident to delay in litigation can be greatly reduced.

There is a story among the traditions of the Ohio bar that a Mr. Nash, who has written a book generally used to aid practitioners in Ohio before the adoption of the code of procedure in 1851, was very indignant at the enactment of that new measure, and he severely condemned it. He said that the code was a barbarous arrangement under which a suit could be brought against one man, judgment taken against another and an execution issued upon that judgment against any good man in the State of Ohio. Now our profession is naturally conservative. It is our natural disposition to have things done in an orderly way and to believe that the way in which things have been done should not be departed from until we clearly see an opportunity for improvement. I do not object to this spirit. Especially in this country, I think there will be progressive movements sufficient to prevent such conservatism from being a real obstruction to our general progress. I venture to think,

however, that in the matter of procedure and in the adoption of special methods and systems for the settling of classes of controversies, we ought to be careful that this professional conservatism does not keep us, with the power that we necessarily exercise in respect to technical legal legislation, from adopting the reforms which are in the interest of equalizing the administration of justice as far as possible between the rich and the poor.

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BILLS AND NOTES—FICTITIOUS PAYEE.

BARTLETT et al. v. FIRST NAT. BANK OF CHICAGO.

Supreme Court of Illinois. December 21, 1910.

93 N. E. 337.

Where an agent drew drafts on his principal to the order of third persons, intending neither that such persons should have any interest in the drafts nor that the drafts should ever be delivered to them, nor that they should indorse them to receive payment therefor, nor to negotiate the same, the payees were not bona fide payees but fictitious persons, and the drafts were in law payable to bearer and were transferable by delivery and, on their receipt by a bank, payment could be enforced against the principal without claiming through the indorsements made by the agent

HAND, J.: This was an action in assumpsit commenced by Bartlett, Frazier & Carrington against the First National Bank of Chicago, in the municipal court of Chicago, to recover the amount of 135 drafts drawn by the appellants, by their agents, R. L. Walsh, upon themselves, to the order of persons residing in the vicinity of Reddick, in Kankakee county, during the year 1906, and fraudulently indorsed by said R. L. Walsh in the names of the payees named in said drafts and paid to R. L. Walsh by the State Bank of Reddick, and to the State Bank of Reddick by the First National Bank of Chicago, and to the First National Bank of Chicago by the appellants. The declaration consisted of the common counts, and the general issue was filed, and upon a trial the jury returned a directed verdict in favor of the defendant, upon which the court rendered judgment, after overruling a motion for a new trial, in favor of the defendant for costs. Said judgment was affirmed, on appeal, by the Appellate Court for the First District, and, said court having granted a certificate of importance, a further appeal has been prosecuted to this court.

It appears from the record that Bartlett, Frazier & Carrington were engaged in the buying of grain in the city of Chicago and at numerous places in the country; that in 1904 they were running an elevator at Reddick; that R. L. Walsh was the manager of the Reddick elevator; that he bought grain from the farmers residing in that vicinity, and paid them for their grain by delivering to them drafts drawn upon blanks in the following form, which were furnished R. L. Walsh by Bartlett, Frazier & Carrington:

"No.....Bartlett, Frazier & Carrington, $.....
"Pay to the order of.....
.....Dollars for.....bushels.....Lbs. of.....
Bartlett, Frazier & Carrington,
By.....Agent.
To Bartlett, Frazier & Carrington, Chicago, Illinois."

The blanks were filled up by R. L. Walsh with the farmers' names, the amount due them for grain, and the kind of grain purchased. The drafts were cashed by the State Bank of Reddick, and by that bank forwarded to the First National Bank of Chicago, and by that bank collected of Bartlett, Frazier & Carrington. In the year 1905, to accommodate the farmers and to meet competition, R. L. Walsh would fill out the drafts, as above indicated, for grain and pay the farmers for their grain in cash, and then, without authority, indorse the drafts with the farmers' names and obtain the amounts of the drafts from Bartlett, Frazier & Carrington by putting the drafts through the banks. There is no evidence that the banks knew R. L. Walsh was indorsing the drafts without authority from the payees, but Bartlett, Frazier & Carrington must soon have received notice of the fact that R. L. Walsh was indorsing the drafts in the names of the payees and without authority, as on September 8, 1905, they wrote R. L. Walsh the following letter: "Chicago, Sept. 8th, 1905. Mr. R. L. Walsh, Reddick, Illinois.—Dear Sir: Yours of the 7th inst. at hand. In reference to your endorsing the farmer's name, we do not approve of this, as we do not consider it businesslike, unless you have direct, written authority from the farmer to do so. When you want to draw money from the bank yourself to pay currency

to the farmer, make the check read, 'Pay to the order of currency account, and then give the name of the farmer; then when you draw the money at the bank, endorse your name, but not the farmer's name, on the back. This will make our records here show plainly to whom the money should be charged, and under our surety bond we will be protected in case any of our agents make a wrong use of the money. Very truly yours, B., F. & C. Dictated by H. J. P."

On the same day appellants wrote the State Bank of Reddick, which had been in the habit of cashing grain drafts drawn by R. L. Walsh, the following letter: "Bartlett, Frazier & Carrington, Chicago, Sept. 8, 1905. State Bank of Reddick, Reddick, Illinois.—Dear Sir: In future will you kindly cash drafts drawn on us which read, 'Pay to the order of currency account,' (name of farmer to be inserted,) and then endorsed on the back by Mr. R. L. Walsh, our agent at Reddick, and, of course, signed by him? This will enable Mr. Walsh to draw all the currency necessary where the farmers wish payment in currency, and at the same time it will keep our records straight. Yours very truly, B., F. & C. Dictated by H. J. P."

* * * * * *

The appellants base their claim of liability against the First National Bank of Chicago upon the contention that the indorsements of the names of the farmer payees upon the drafts by R. L. Walsh were forgeries, and that when those drafts were presented by the First National Bank of Chicago to the appellants for payment, the First National Bank of Chicago guaranteed such indorsements to be true and genuine, and, as the amounts thereof were paid to the First National Bank of Chicago by the appellants in consequence of said forged and fraudulent indorsements, the appellants are entitled to recover from the First National Bank of Chicago, the amounts paid to said bank by them upon said drafts. It is undoubtedly the general rule that, when a drawee pays a draft to an indorser who derives title to the draft through a prior forged indorsement, he may recover back the money so paid. First Nat. Bank v. Northwestern Nat. Bank, 152 Ill. 296, 38 N. E. 739, 26 L. R. A. 289, 43 Am. St. Rep. 247. We think, however, the undisputed evidence in this record shows that the negligence of the appellants was so gross that they ought not as a matter of law to be permitted to recover from the First National Bank of Chicago the amounts of the drafts upon which the names of the farmer payees were forged by R. L. Walsh, who was the agent of the appellants. The appellants knew their agent, R. L. Walsh, was drawing drafts against them with which to obtain money from the banks to pay for grain which he was buying upon their account, and that Walsh was wrongfully indorsing the names of the payees in whose favor said drafts were drawn upon said drafts. They knew that Walsh was short upon grain which he had purchased for them, and they also knew that Walsh persisted in drawing drafts and indorsing them in the names of the payees after they had forbidden him to do so. While in possession of this information they retained him in their employ, and permitted him to continue drawing and indorsing said drafts without informing the banks who were handling such drafts of the fact that Walsh was wrongfully indorsing those drafts.

When one of two innocent parties suffers loss by reason of the wrongful act or acts of a third party, the rule is almost universal that the party who has made it possible, by reason of his negligence, for the third party to commit the wrong must stand the loss. In this case, if the appellants had notified the banks who were handling said drafts that R. L. Walsh was forging the names of the farmer payees in order to get the money on the said drafts from the banks, the loss which was sustained by the passing of said drafts would never have occurred. This they did not do, but remained quiet so long as they thought they were getting the benefit of the money that was paid on said drafts, and only complained when they learned that their agent, Walsh, was taking advantage of the position in which they had placed him by his appointment as their agent, with authority to draw drafts, by drawing drafts to farmers who had not delivered grain, and indorsing the names of such farmer payees upon the drafts and drawing the money from the banks thereon and appropriating the same to his own use. We think it clear, if the appellants enjoyed the benefits which accrued to them from the business done by Walsh so long as it was done honestly, that, when Walsh became dishonest and appropriated the money which he drew by reason of forged indorsements, they should suffer the loss which followed his rascality, and not be permitted to unload such loss upon the banks that innocently handled said drafts.

The drafts drawn by R. L. Walsh in the name of the appellants against themselves were all made payable to some person who resided near Reddick, or bearer, and in the sense that there were such individuals as payees, the payees named in the drafts were not fictitious persons. At the time, however, Walsh drew said drafts, he did not intend that the persons whose names he inserted as payees in said drafts should have any interest in said drafts, or that said drafts should ever

be delivered to said payees, or that said payees should indorse said drafts in order to receive payment therefor or for the purpose of negotiating the same. In the eye of the law, therefore, the payees named in said drafts were not bona fide payees, but mere fictitious persons. Said drafts were therefore, in law, payable to bearer, and were transferable, therefore, by delivery, and upon their receipt by the appellee payment thereof could be enforced against the appellants by the First National Bank of Chicago without claiming through the said forged indorsements, but as the holders of negotiable paper made payable to bearer. In Phillips v. Mercantile Nat. Bank, 140 N. Y. 556, 35 N. E. 982, 23 L. R. A. 584, 37 Am. St. Rep. 596, the cashier of the Sumpter Bank drew drafts in its name against the Mercantile Bank to the order of various persons with whom the Sumpter Bank did business. He then indorsed the drafts in the names of the payees to the order of certain stockbrokers, who collected them from the Mercantile Bank. It was held that the payees named in the drafts were in law fictitious persons, and the drafts, in legal effect, were payable to bearer. In Snyder v. Corn Exchange Nat. Bank, 221 Pa. 599, 70 Atl. 876, 128 Am. St. Rep. 780, Snyder was a depositor in the bank, and sued to recover the amount of certain checks alleged to have been wrongfully paid and charged to his account. The checks were drawn by a clerk employed by the plaintiff to the order of one Charles Niemann. The clerk then indorsed the name "Niemann" upon the checks, and delivered them to R. M. Miner & Co., bucket shop men. The name Charles Niemann was used by the clerk as that of a fictitious person. The court said: "The intent of the drawer of the check in inserting the name of the payee is the sole test of whether the payee is a fictitious person, and the intent of the drawer of these checks, as attorney for the appellant, must, as just stated, be regarded, as against the bank upon which they were drawn, as the intent of the appellant himself." The First National Bank did not, therefore, make out its title to said drafts through a forged indorsement, and appellants could not, therefore, recover back the money paid to the bank on said drafts.

Numerous other grounds are urged in support of the judgments of the trial and appellate courts, but the two grounds herein considered are so conclusive against the right of the appellants to recover, upon the undisputed evidence, that we do not think it necessary to consider the other grounds urged in the briefs.

The judgment of the Appellate Court will be affirmed.

Judgment affirmed.

NOTE.—*Drawee Paying Check on Forged Indorsement.*—This question is quite different from that of the drawee paying a check where the signature of the drawer has been forged. We considered that question in 70 Cent. L. J. 417; 71 id. 139; id. 147. In the case of forgery of the drawer's signature, the cases diverge on the theory that the drawee is bound to know the drawee's signature and, therefore, the drawee paying cannot recover from a bona fide holder. Others hold this constitutes no estoppel unless the holder has been prejudiced. But there seems no rule that there is a conclusion of the entire matter where an indorsement is forged.

The theory in case of forged indorsement is, that at the outset there is a valid instrument which has been unlawfully altered, or as better expressed, an unlawful incident attempted to be annexed and if payment is made upon that attempt, it is a payment made upon a mistake of fact and the principle applies that money paid under such a circumstance is recoverable.

This rule applies to whatsoever holder, who collects in reliance on the forged indorsement, whether his indorsement is merely for collection or in any other way. Thus where a check was originally payable to George Raymond and indorsed by another who forwarded it to another bank for collection, and the collecting bank indorsed it: "Pay to any National Bank or order. City National Bank, by A. F. Hitchcock, Cashier," it was claimed that this indorsement was not a guarantee of the prior indorsement, in a suit by the drawee bank to recover what it paid to the collecting bank. It appears that the collecting bank paid nothing to the forger when it received the check, but did turn over to him the amount remitted by the drawee bank. Bank v. Bank, 182 Mass. 130, 65 N. E. 24, 94 Am. St. Rep. 632.

The court said: The plaintiff does not contend that the defendant is liable over on the ground that by presenting the check for payment there was an implied representation and warranty of the presenter's right to be paid, including the genuineness of the prior indorsement to it, and upon that point we express no opinion; but it does contend that the defendant is liable to it in money had and received for the money paid it under mistake of fact."

It was further claimed by defendant that its letter of transmittal showed it was merely acting as agent to collect and it paid over the proceeds before it was notified plaintiff was not liable on the check. The court said: "There is nothing, either in the indorsements on the check or in the letter" to this effect. "The undisclosed fact that it was in fact an agent for the forger and had paid the proceeds to him in good faith before it knew of the claim of the drawee of the check is immaterial."

There is a great abundance of authority on the mistake of fact theory, and it is only made unavailable when there is such negligence by the drawee bank as to have misled and prejudiced the person to whom payment is made as to make it inequitable that the drawee bank should recover. The only requisite generally is that the paying bank shall be ignorant of the forgery. Bank v. Bank, 40 Ill. App. 640, 152 Ill. 206, 38 N. E. 739, 43 Am. St. Rep. 247; Bank v. Bank, 4 Ind. App. 355, 51 Am. St. Rep. 221, 30 N. E. 868; Bank v. Bank, 56 Neb. 149, 76 N. W. 430;

Star, etc., Ins. Co. v. N. H. Nat. Bank, 60 N. H. 442; Rouvant v. Bank, 63 Tex. 610.

In addition, this right of recovery by the paying bank is upon the principle that the transferrer of the check warrants the genuineness of the instrument and of prior indorsements. Bank v. Bank, 56 Neb. 149, 76 N. W. 430; Natl. Bank v. Mechanics Bank, 55 N. Y. 211, 11 Am. Rep. 232; Redington v. Woods, 45 Cal. 406. Of course, we have seen that this guarantee of genuineness of the instrument has been met by a contrary principle, so far as the drawee is concerned.

This recovery by the drawee bank it has been held should be preceded by an offer to return the instrument within a reasonable time. Rick v. Kelly, 30 Pa. St. 527; Welch v. Goodwin, 123 Mass. 71, 25 Am. Rep. 24.

But delay in this only precludes recovery if because of it the party to whom payment is made has been put in a worse position than if he had been notified earlier. Bank v. Bank, 4 Ind. App. 355, 30 N. E. 808, 51 Am. St. Rep. 221; Birmingham Nat. Bank v. Bradley, 103 Ala. 109, 15 So. 440, 49 Am. St. Rep. 17.

It has been said that: "A long line of authorities sustain the proposition that as between drawee and a good faith holder of a check, the drawee bank is to be deemed the place of final settlement, where all prior mistakes and forgeries shall be corrected and settled once for all; and if overlooked, and payment is made, it must be deemed final." First Nat. Bank v. Marshalltown State Bank, 107 Iowa 329, 77 N. W. 1045.

This is a broad statement and we think it goes beyond the necessities of such a case as it was made in, that is, where the drawer's name is forged, even if to that extent it is good, which we have disputed in the references made at the beginning of this note. C.

CORAM NON JUDICE.

ODDITIES OF TESTATORS.

The Irish gentleman, says Tit-Bits, who has left $5,000 to a religious house, on condition that his wife enters it and spends the rest of her life in prayer is another example of the quaint methods by which the dead sometimes endeavor to control the living.

It was a blunt farmer who drew up his will leaving $500 to his widow. When the lawyer reminded him that some distinction should be made in case the lady married again, he doubled the sum, with the remark that "him as gets her'll deserve it."

It was a wealthy German who, fifteen years ago, bequeathed his property to his six nephews and six nieces, on the sole condition that each of the nephews married a woman named Antoine and each niece married a man named Anton. The first born of each marriage was to be named Anton or Antoine, according to sex. Each marriage was also to take place on one of St. Anthony's days. What happened to the nephews and nieces is "wropt in misery" in the office of the German registrar general.

An exchange states that the winding up of the estate of the widow of a former French consul general at Jerusalem, an old lady, who died two years ago, leaving property valued at $6,000,000, will be no easy matter. The deceased seems to have been incessantly occupied in making wills and adding codicils. The last codicil discovered, which is dated August 16, 1907, "confirms the two last testaments," revoking all others. But the lady drew up in all, fifteen wills. Nine of the number are plainly revoked by the above codicil, but six others all bear the same date, May 9, 1904.

Two of these appear to be the "last testaments" referred to in the codicil, as no later wills have so far been found. But which two of the six are the latest?

The lady evidently wrote them at different hours of the same day, but there is no indication in any of them of the precise moment. The point is an important one, as by three of the six wills, but not by the others, a female relative of the deceased inherits large sums, which the universal legatee may or may not have to pay.

The courts are now engaged in an attempt to determine by "internal evidence" which of the wills most probably expressed the latest wishes of the deceased, French jurisprudence allowing in such matters considerable latitude.

Without any warning a Washington boy of eight, says the Cleveland Plain Dealer, has been brought face to face with the fact that life is frequently a very hard proposition. The boy is to receive an estate, value not named, under certain conditions. These conditions are severe enough to leave the fate of the estate, value not named, in considerable doubt. The boy must graduate from a public high school before he is fourteen; he must win a college degree before he is eighteen; he must study law six months at Oxford; he must graduate from West Point. After receiving his commission he must resign and complete his law studies and then practice the profession. All this he must accomplish by the time he is twenty-eight.

Incidentally he is to acquire proficiency in manual training, in dancing and in music, and is to beware of women. If he fails to meet these conditions he is to forfeit all claim to the property. Probably the boy is too young to appreciate the magnitude of these tasks, but it looks as if the coming twenty years would prove an exceedingly busy period for him,—with the shadow of failure always darkening the rugged pathway.

The man who made this peculiar will and imposed these exacting conditions may have had an exalted view of the importance of a thorough education, but the wisdom of his method and the value of his theory can only be told by the youth himself,—this hapless hero of a gigantic educational plot.

Later on it may occur to the young man to seriously consider the value of the estate as compared with the labor and sacrifices of the task.

HUMOR OF THE LAW.

"I'm afraid," said the lawyer, "we cannot get justice in this court. I shall move for a change of venue."

'For heaven's sake," cried the State legislator, who was to undergo trial, "if you really think that, let's let well enough alone."

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Abatement and Revival**—Termination of Office.—Expiration of term of office of state official and induction of his successor abates a suit to require him to proceed under a special apportionment act in certifying names of nominees for Congress.—Richardson v. McChesney, 31 Sup. Ct. 43.

2. **Action**—Separate Causes of Action.—Causes of action, sounding in ordinary negligence and in gross negligence, may be joined in the same complaint.—Astin v. Chicago, M. & St. P. R. Co., Wis., 128 N. W. 265.

3. **Adverse Possession**—Nature of Possession. —One in possession for over 30 years of a tract under the claim that it formed part of a governmental subdivision while it was, in fact, part of another subdivision, held not to acquire title by adverse possession, so as to defeat ejectment by the owner.—Keller v. Harrison, Iowa, 128 N. W. 851.

4.——Presumptions.—The possession of grantor and privies will not be presumed to be adverse to the purchaser or his grantees, but if there is clear and unmistakable evidence to the contrary, such possession will ripen into title.—Folley v. Thomas, Ind., 93 N. E. 181.

5.——Rights of Heirs.—If a person enters and takes possession of land under colorable title, the possession at his death is cast by descent upon his heirs, who may continue the possession in good faith in themselves and tack it to that of their ancestor's, so as to complete the necessary statutory period.—Barrett v. Brewer, N. C., 69 S. E. 614.

6. **Agriculture**—Thresher's Lien.—The lien of a thresher, retaining in his possession part of the grain threshed as security for his charges, is not lost by depositing the grain in an elevator.—Gordon v. Freeman, Minn., 128 N. W. 834.

7. **Assault and Battery**—Self-Defense.—If an attempted arrest be unlawful, the party sought to be arrested cannot attempt to effect his escape by using a deadly weapon, if he has no reason to apprehend a greater injury than a mere unlawful arrest.—State v. Gum, W. Va., 69 S. E. 463.

8. **Attorney and Client**—Compensation.—The payment of the fee to one of the attorneys of record will discharge the client and the party recovered from as to all liability, even though formal notice of lien be served upon them.—Schiefer v. Freygang (Sup.), 125 N. Y. Supp. 1037.

9.——Substitution of Attorney.—A solicitor cannot complain of a substitution of solicitors if his lien for services is preserved.—Wipfler v. Warren, Mich., 128 N. W. 178.

10. **Bankruptcy**—Claims.— Assignments as collateral security for loan of unallowed claims of the United States, can confer no interest in the assignees against trustee in bankruptcy of assignors.—National Bank of Commerce of Seattle v. Downie, 31 Sup. Ct. 89.

11.——Concealment of Goods.—To warrant an order requiring a bankrupt to surrender goods or money, a referee must be reasonably satisfied that the goods or money are under the bankrupt's control.—In re Krall (D. C.), 182 Fed. 191.

12.——Debt Entitled to Priority.—A statement in a claim filed against the estate of a bankrupt that it is for "wages due deponent as clerk and manager and is a preferred claim" is not sufficient to entitle the claimant to priority of payment, in the absence of either statement or proof that such wages were earned within three months before the filing of the petition.—In re Dunn (D. C.), 181 Fed. 701.

13.——Discharge.—Bankr. Act expressly releases all liabilities of a discharged bankrupt other than those excepted by the act.—Drake v. Vernon, S. D., 128 N. W. 317.

14.——Discharge.—Under National Bankruptcy Act a surety on an appeal bond in an attachment case is not discharged because of the discharge of his principal in bankruptcy.—Brown & Brown Coal Co. v. Antezak, Mich., 128 N. W. 774.

15.——Effect on Garnishment Proceedings.—Proceedings of the federal courts in bankruptcy adjudicating one a bankrupt, held a defense to enforcement of judgment against a garnishee rendered within four months of filing of the debtor's petition in bankruptcy.—Hall v. Chicago, B. & Q. R. Co., Neb., 128 N. W. 645.

16.——Effect on Lease.—The bankruptcy of a lessee does not sever the relation of landlord and tenant, and the tenant's obligation to pay rent under his lease is not discharged as to the future, unless the trustee elects to retain the lease as an asset.—In re Roth & Appel (C. C. A.), 181 Fed. 667.

17.——Exemptions.—A life policy, payable to insured's wife, exempt from his creditors, though reserving to him the right to change the beneficiary.—Allen v. Central Wisconsin Trust Co, Wis., 127 N. W. 1003.

18.——Fraudulent Conveyance of Stock.—The court adjudging a transfer of corporate stock as fraudulent under the bankruptcy law held required under the pleadings and evidence to

order the transferee to return the certificates of stock and to account for the dividends received by him.—Wasey v. Holbrook (Sup.), 125 N. Y. Supp. 1087.

19.——Homestead Exempt.—Where a bankrupt lived alone with his mother, he thereby cared for a "dependent female," and was entitled to a homestead exemption.—In re Glisson, (D. C.) 182 Fed. 287.

20.——Insolvency.—An adjudication of bankruptcy is conclusive of the insolvency of the bankrupt for all purposes of the proceeding.—In re V. & M. Lumber Co., Inc. (D. C.), 182 Fed. 231.

21.——Mechanics' Liens.—Certain mechanics' liens against the property of a bankrupt, purchased by his sons within two days prior to an assignment for the benefit of creditors, held fraudulently procured, and unenforceable against the bankrupt's general creditors.—In re Kyte (D. C.), 182 Fed. 166.

22.——Preferences.—The act of a bank in setting off notes due it from the bankrupt against the proceeds of a discount does not constitute a preference unless the loan has been made with the prior understanding that such application is to be made.—In re V. & M. Lumber Co., Inc., (D. C.), 182 Fed. 231.

23.——Review on Appeal.—Where an order of a District Court in bankruptcy has been reversed by the Circuit Court of Appeals on appeal, it is annulled for all purposes, and cannot be amended by the District Courts.—In re Lesailus (C. C. A.), 181 Fed. 690.

24.——Substitution of Securities.—An assignment to a bank of accounts receivable by a corporation, more than four months prior to its bankruptcy, to secure an indebtedness then created and any other indebtedness then owed by the corporation, then due or to become due, held to entitle the bank to hold such accounts as security for a prior note of the corporation.—In re Reese-Hammond Fire Brick Co. (C. C. A.), 181 Fed. 641.

25.——Suit to Avoid Assignment.—In a suit by a trustee in bankruptcy to avoid an assignment, the assignee should not be credited with the sum repaid him by way of dividends upon his debt, as this could be obtained in the bankruptcy court.—Eicholz v. Polack (Sup.), 125 N. Y. Supp. 1108.

26.——Wife's Dower Interest.—A wife's dower interest in real estate of her husband sold as a part of his estate in bankruptcy must be determined by the state law.—In re Hays (C. C. A., 181 Fed. 674.

27 **Banks and Banking**—Deposit of Indorser.—An indorser held not entitled to his deposit in an insolvent bank against the amount due the bank on a note, where the maker is solvent.—Borough Bank of Brooklyn v. Mulqueen (Sup.), 125 N. Y. Supp. 1034.

28.——Misapplication of Funds.—Indictment for willful misapplication of funds of national bank need not charge a conversion by recipient of proceeds at a discount, where it alleges conversion by such officer.—United States v. Heinze, 31 Sup. Ct. 98.

29.—National Banks.—The United States alone can object to the want of authority of a national bank to accept a conveyance of realty to be held in trust.—Kerfoot v. Farmers' & Merchants' Bank, 31 Sup. Ct. 14.

30.——Power of Officers.—A cashier of a bank held without authority to release an indorser on a note and compromise a claim in favor of the bank.—Farmers' & Mechanics' Bank v. Clancy, Mich., 128 N. W. 752.

31. **Benefit Societies**—Rights of Beneficiaries.—Where parents take out insurance policies for the benefit of each other and agree in case of death of either the policies shall run to their children, and not be changed, the children do not acquire sufficient interest to enforce the contract.—Knights of the Modern Macabees v. Sharp, Mich., 128 N. W. 786.

32. **Bills and Notes**—Failure of Consideration.—In an action on a note reciting that it was given for the price of certain personalty, the maker may plead as failure of consideration a breach of a contemporaneous oral warranty.—Anthony v. Cody, Ga., 69 S. E. 491.

33.——Indorsement.—Indorsement of a negotiable note held necessary to transfer title to the transferee.—Myers v. Petty, N. C., 69 S. E. 417.

34.——Parties Entitled to Sue.—A person beneficially interested in a draft made payable to him in a fictitious name may sue thereon in his own name.—Valiquette v. Clark Bros. Coal Mining Co., Vt., 77 Atl. 869.

35.——Power of Agent.—One receiving a check from an agent indorsed in the name of the principal held not liable to the principal for a loss resulting from the agent misappropriating the proceeds.—Cluett v. Couture (Sup.), 125 N. Y. Supp. 813.

36. **Boundaries**—Evidence.—Where, in an action to establish a boundary between two sections, it is quite as probable that an old fence which was for about 40 years used as the boundary was built on the section line as that it was not, the decree establishing it as the boundary will not be disturbed.—Parsons v. Bills, Mich., 128 N. W. 721.

37. **Carriers**—Commutation Ticket.—Plaintiff, obtaining a commutation ticket by mistake made out in the name of Mr. C. instead of Mrs. C., held not entitled to maintain action for conversion, where it was taken up by the conductor when she attempted to use it.—Colton v. Delaware, L. & W. R. Co., N. J., 77 Atl. 1020.

38.——Liability of Initial Carrier.—The interstate commerce act, making the initial carrier who issued a bill of lading liable for the default of each successive carrier to the point of destination, merely declares the common law and is constitutional.—Reid v. Southern Ry. Co., N. C., 69 S. E. 618.

39.——Regulation of Rates.—Whether or not other subjects of transportation are regulated is immaterial in considering the validity of regulations of particular subjects.—State v. Atlantic Coast Line R. Co., Fla., 53 So. 601.

40.——Shipping Receipts.—Delivery by express company to shipper, and his acceptance without dissent, of a shipping receipt containing a limited liability clause, held to raise a rebuttable presumption that the shipper assented to the restriction.—Hill v. Adams Express Co., N. J., 77 Atl. 1073.

41.——Termination of Liability.—A carrier which assumed the responsibility of tracing the shipment and reporting delivery if made, so that the shipper might enforce payment of the consignee, could not thereafter claim that its responsibility in that respect terminated on delivery to a connecting carrier.—Atlantic Coast Line R. v. Schirmer, S. C., 69 S. E. 439.

42.——Time-Tables.—The time-table of a carrier held inadmissible to show its limited liability in an action for breach of contract to carry a passenger to arrive at a certain time.—Hayes v. Wabash R. Co., Mich., 128 N. W. 217.

43. **Commerce**—State Regulation.—Regulation of interstate commerce which will be valid under the common law of the state is no less valid because made by statute.—Western Union Telegraph Co. v. Commercial Milling Co., 31 Sup. Ct. 59.

44. **Constitutional Law**—Due Process.—Enforcement of railway franchise tax by judgment in personam against a railway company which is operating the road and is in full control does not deny due process of law guaranteed by fourteenth amendment to federal Constitution.—Illinois Cent. R. Co. v. Commonwealth of Kentucky, 31 Sup. Ct. 95.

45.——Due Process.—Expense of constructing railway bridge over a highway may be cast on railway company without denying due process of law requiring compensation to be made when private property is taken for public use.—Cincinnati, I. & W. Ry. Co. v. City of Connersville, 31 Sup. Ct. 93.

46.——Due Process of Law.—Due process of law secured to the Philippine Islands by Act July 1, 1902, held not denied by affirmance in the supreme court of the islands of a conviction of an offense described in Philippine Pen. Code, art. 343, which was repealed after conviction in the court of first instance by act of Philippine Commission October 9, 1907.—Ong Chang Wing v. United States, 31 Sup. Ct. 15.

47.——Inheritance Tax.—Enactment of statutes subjecting to inheritance tax rights of surviving wife in community property held not to violate the contract clause of the federal Constitution.—Moffitt v. Kelly, 31 Sup. Ct. 79.

48.——Prohibiting Exportation of Philippine Coin.—Owner of Philippine silver coin held not deprived of property without due process of law by prohibition against exportation of such coin from the Philippine Islands.—Ling Su Fan v. United States, 31 Sup. Ct. 21.

49.——Vested Rights.—A statute changing the law providing for the service of process relates merely to the remedy, so that even when applied to a cause of action existing at its adoption it does not disturb vested rights.—Daniels v. Detroit, G. H. & M. Ry. Co., Mich., 128 N. W. 797.

50. **Contracts**—Construction.—The practical construction of a contract by the parties thereto or their successors by their uniform and unquestioned acts, continued for a long period, is entitled to great weight.—Carthage Tissue Paper Mills v. Village of Carthage, N. Y., 93 N. E. 60.

51.——Joint or Several Interests.—Where the consideration furnished by obligees in a contract is several and not joint, their interests may prima facie be regarded as several and not joint if other features of the contract do not clearly conflict.—Atlanta & St. A. B. Ry. Co. v. Thomas, Fla., 53 So. 510.

52.——Performance.—A promise by one to pay the debt of another without fixing any time for payment is a promise to pay the debt when it becomes due.—Urquhart v. Belloni, Or., 111 Pac. 692.

53. **Corporations**—Doing Business in Foreign State.—A foreign corporation, only maintaining an agent in the state for the purpose of taking orders, subject to its approval, for goods to be thereafter delivered, is entitled to sue in the courts of the state.—J. B. Inderrieden Co. v. J. C. Johnson Co., Minn., 128 N. W. 570.

54.——Estoppel.—Stockholders of a corporation who participated in the distribution of its assets received from a compromise of a suit by receivers held estopped to thereafter rescind their subscriptions for fraud or to attack the validity of the settlement.—Seminole Securities Co. v. Southern Life Ins. Co., C. C., 182 Fed. 85.

55.——Injury to Minority Stockholder.—Equity will interfere to prevent the majority of corporate stockholders from disposing of corporate property to one of their numbers for a grossly inadequate price, in fraud of the rights of minority stockholders.—Andrews v. Sumter Commercial & Real Estate Co., S. C., 69 S. E. 604.

56.——Statutory Regulations.—A foreign corporation doing business within the state with the consent of the state held subject to such changes as may, from time to time, be made in the law touching the service of process on it.—Daniels v. Detroit, G. H. & M. Ry. Co., Mich., 128 N. W. 797.

57.——Ultra Vires Acts of Directors.—A bill by stockholders of an insolvent corporation against the directors for ultra vires and fraudulent acts held insufficient, where it does not state facts showing any assets for the stockholders after paying creditors.—Williams v. Neville, Miss., 53 So. 594.

58. **Criminal Law**—Compelling Accused to Incriminate Himself.—Constitutional privilege held not violated by compelling druggist, indicted for unlawfully selling liquor, to produce physicians' prescriptions in court to be used as evidence against him.—State v. Davis, W. Va., 69 S. E. 639.

59.——Instructions.—It is proper for the court to recapitulate fairly the contentions of the state and of accused to illustrate the bearing of evidence upon the issues.—State v. Cox, N. C., 69 S. E. 419.

60.——Sickness of Accused.—In case of the sickness of accused, a mistrial may be ordered even in capital cases.—Falls v. State, Fla., 53 So. 612.

61. **Damages**—Personal Injuries.—In an action for personal injuries, damages based on plaintiff's inability to enjoy life are speculative and not permissible.—South Bend Brick Co. v. Goller, Ind., 93 N. E. 37.

62. **Dedication**—Plats.—A plat as a mode of conveyance was unknown to the common law, and can have such effect only by virtue of statute.—Ryerson v. City of Chicago, Ill., 93 N. E. 162.

63. **Deeds**—Recitals as to Grantee.—Acceptance by a grantee of a deed containing a recital confirming the grantor's easement in other land held as effective as a deed from the grantee.—Stansell v. American Radiator Co., Mich., 128 N. W. 789.

64. **Divorce**—Alimony.—Provisions in a decree of divorce requiring payment of money to children upon their reaching majority, creating a lien on the divorced husband's property, and providing for maintenance of the wife's mother held invalid, though embraced in the decree with the oral consent of the husband.—Maslen v. Anderson, Mich., 128 N. W. 723.

65.——Validity of Judgment.—A decree of divorce obtained in a court of a sister state, on service by publication alone, by a husband who left the state where he had resided with his wife since the marriage, held void as against the wife.—Ackerman v. Ackerman, N. Y., 93 N. E. 192.

66. **Easements**—Notice.—One who purchases land burdened with a visible easement is ordinarily charged with notice that he is purchasing a servient estate.—Seng v. Payne, Neb., 128 N. W. 625.

67. **Embezzlement**—Pledged Property.—A pledgee of securities may not rehypothecate them, in the absence of an agreement authorizing it.—Commonwealth v. Althause, Mass., 93 N. E. 202.

68. **Eminent Domain**—Interest Acquired.—Where a street is acquired by a city by condemnation, the fee to the center of the street remains in the abutting owners.—Sears v. City of Chicago, Ill., 93 N. E. 158.

69. **Equity**—Retention of Jurisdiction Acquired.—Equity having obtained jurisdiction of a cause will retain it for all purposes, and render such decree as will protect the right of the parties before it, and thus avoid unnecessary litigation.—Seng v. Payne, Neb., 128 N. W. 625.

70.——Right to Second-Class Postage Rates.—Where, in a suit to enjoin a postmaster from refusing complainant second-class rates, complainant was found not to be entitled to an injunction, the bill could not be retained to determine complainant's right to recover alleged excess postage paid, and its liability on certain bonds.—Lewis Pub. Co. v. Wyman, C. C. A., 182 Fed. 13.

71. **Estoppel**—Matters Precluded.—The validity of a decree for sale of infant's real estate for reinvestment and an order appointing a trustee to make the sale and of the bond of such trustee is not open to question by a surety on the bond.—United States v. Morse, 31 Sup. Ct. 37.

72.——Public Streets.—Where the boundaries of a street have not been actually located by monuments, and abutting landowners have marked the boundaries thereof for a long period by permanent improvement, the public is estopped to assert a claim to the street beyond the boundaries so established.—Town of New Castle v. Hunt, Ind., 93 N. E. 173.

73. **Evidence**—Hypothetical Question.—A hypothetical question should embrace facts of which there is some evidence or which may fairly be inferred from the evidence.—Taylor v. Taylor, Ind., 93 N. E. 9.

74.——Judicial Notice.—Judicial notice is taken that in Vermont high water and ordinary freshets are likely to occur in streams at different seasons of the year sometimes carrying down floodwood and large quantities of ice.—Doty v. Village of Johnson, Vt., 77 Atl. 866.

75.——Mortuary Table.—Mortuary tables in a work on "Inheritance Tax Calculations" held admissible in evidence.—Brenisholtz v. Pennsylvania R. Co., Pa., 78 Atl. 37.

76.——Parol Evidence.—A written order for goods may not be varied by a parol agreement between the buyer and the seller's agent made prior to the execution of the written order.—Fresno Home Packing Co. v. A. J. Lyon & Co., Miss., 53 So. 585.

77. **Federal Courts**—Jurisdiction.—Asserted rights of citizens of New York and West Virginia as owners of timber lands in Georgia to protection from discharge of gases from works of a New Jersey corporation situated in Tennessee is not a claim to real property so as to confer jurisdiction on Tennessee court over the New Jersey corporation.—Ladew v. Tennessee Copper Co., 31 Sup. Ct. 81.

78. **Good Will**—Sale.—Where the law gives the term, "good will," as used in an instrument transferring a business, a definite meaning, it must be presumed that that meaning was intended in the contract of sale.—Von Bremen v. MacMonnies, N. Y., 93 N. E. 186.

79. **Habeas Corpus**—To Review Judgment.—Habeas corpus is not maintainable to review judgment of a court of competent jurisdiction where no attempt to exert the jurisdiction of the court in excess of its authority is shown.—Harlan v. McGourin, 31 Sup. Ct. 44.

80. **Homestead**—Rights of Divorced Wife.—Where a homestead is set apart to the applicant's wife and minor children, and thereafter a total divorce is granted, the wife cannot sue to enjoin a sale of property at foreclosure.—Shivers v. Shivers, Ga., 69 S. E. 491.

81. **Husband and Wife**—Wife's Separate Estate.—Where a married woman signed a contract for trees, and after accepting and paying for a part refused to accept the remainder, the contract is not enforceable against her separate estate.—Bushnell v. Bertolett, N. C., 69 S. E. 610.

82.——Fraudulent Representations by Husband.—If a wife deeded property to another, pursuant to negotiations fraudulently conducted by her husband with such other, the benefit which she receives would not necessarily be the limit of the recovery against her for the fraud.—Atherton v. Barber, Minn., 128 N. W. 827.

83.——Joint Tenancy.—A joint tenancy may be created in personalty if the parties so intend, though they be husband and wife.—In re Kaupper, 125 N. Y. Supp., 378.

84.——Torts of Wife.—A married woman committing an offense in the presence of her husband is exempt from legal responsibility.—State v. Martini, N. J., 78 Atl. 12.

85. **Interstate Commerce**—Telegraph Companies.—Interstate commerce held not unconstitutionally regulated by statute forbidding telegraph company to limit its liability for negligent transmission of telegram.—Western Union Telegraph Co. v. Commercial Milling Co., 31 Sup. Ct. 59.

86.——What Constitutes.—Goods sold by means of mail orders sent from defendant in Michigan to plaintiff's place of business in Chicago held interstate commerce.—Despres, Bridges & Noel v. Zierleyn, Mich., 128 N. W. 769.

87.——When Shipment Becomes.—Interstate commerce does not begin until the freight has been shipped or started for transportation from one state to another.—Reid v. Southern Ry. Co., N. C., 69 S. E. 618.

88. **Judgment**—Vacating After Term.—The federal circuit, which, after denying motion to remand, sustains demurrer of one defendant and decress dismissal of the bill as to it, cannot vacate such decree after the term.—In re Metropolitan Trust Co. of City of New York, 31 Sup. Ct. 18.

89. **Jury**—Right to Jury Trial.—Defendant, in scire facias on a judgment nisi rendered on a forfeited bail bond, held entitled to a jury trial.—Washington v. State, Miss., 53 So. 416.

90. **Larceny**—Value of Property Stolen.—In fixing the value of property stolen, evidence of its special value to the owner is improperly admitted.—People v. Gilbert, Mich., 128 N. W. 756.

91. **Life Insurance**—Payment of Premium.—Where a life policy is improperly cancelled by insurer and the beneficiary has knowledge thereof, no duty devolves on her to tender subsequent premiums.—Baumann v. Metropolitan Life Ins. Co., Wis., 128 N. W. 864.

92. **Limitation of Action**—Pleading.—The defense of limitation in actions at law can only be availed of by plea.—Houghland v. Avery Coal & Mining Co., Ill., 93 N. E. 40.

93.——Scire Facias to Revive Judgment.—The statute of limitations is a good defense to a writ of scire facias to revive a judgment.—Thomas v. Higgs, W. Va., 69 S. E. 654.

94. **Master and Servant**—Contributory Negligence.—Contributory negligence of a miner in firing a shot held not to preclude recovery for his death from an explosion caused by the master's failure to observe a statutory duty.—Houghland v. Averv Coal & Mining Co., Ill., 93 N. E. 40.

95.——Injuries to Servant.—An engineer, seeing a flagman near the track engaged in flagging his train, may assume that he will move out of the path of the approaching train, where he is in such a position that he may do so.—Illinois Cent. R. Co. v. Comfort, Miss., 53 So. 422.

96.——Injury to Servant.—A motorman attempting to board a car to relieve the motorman in charge from duty held to enter for a purpose connected with his employment, so that he and the motorman actually operating the car were fellow servants.—Howcraft v. Detroit United Ry., Mich., 128 N. W. 779.

97.——Injury to Servant.—The conduct of a servant sustaining an injury while at work in the performance of his duties must be judged in connection with the master's negligence, and the fact that the servant could rely on the master performing its duties.—Grand Trunk Western Ry. Co. v. Poole, Ind., 93 N. E. 26.

98.——Injury to Servant.—The rule that a master must furnish a safe place for his employees to work does not apply to the construction of a building where the place is rendered unsafe by the work and by the manner in which it is done.—Stewart v. Hinkle Iron Co., 125 N. Y. Supp. 1073.

99. **Mines and Minerals**—Mining Claims.—Where stakes were set to mark the boundaries of a mining claim and proper notices posted, it was a sufficient marking upon the ground, even though the corner stakes were not inscribed with the name of the claim.—Bingham Amalga-

mated Copper Co. v. Ute Copper Co., C. C., 181 Fed. 748.

100. **Mortgages**—Deeds Absolute.—A grantor in a deed absolute in form or his heirs may show by parol that it is not such in fact by showing that it was given as security for a debt.—Olney v. Brown, Mich., 128 N. W. 241.

101.——Facts Putting on Inquiry.—A prospective purchaser under a trust deed who has knowledge putting him on inquiry, as to the existence of a title conflicting with that he is about to purchase, is only protected when he makes inquiry and is unable to discover the conflicting right.—Fisher v. Borden, Va., 69 S. E. 636.

102.——Foreclosure.—Foreclosure by advertisement being purely a statutory creation, one availing himself of such method must show an exact compliance with the statute.—Moore v. Carlson, Minn., 128 N. W. 578.

103. **Municipal Corporations**—Indebtedness.—The character of a tax whether state, city, or county is to be determined by the act which authorizes its imposition, and not by the use made of the revenue derived.—Elliot v. City of Philadelphia, Pa., 78 Atl. 107.

104.——Ministerial Duties.—Where a ministerial duty is specifically imposed by statute or otherwise upon a municipality, it is liable for the negligence of its officers in the performance of such duty.—Oakes Mfg. Co. v. City of New York, 125 N. Y. Supp. 1030.

105.——Negligence.—The proximate cause of plaintiff's team running into a lamp post upon running away after being left unhitched and unattended held defendant's negligence in driving its wagon against the team.—Independent Ice Cream Co. v. United Ice Cream Co., 125 N. Y. Supp. 1106.

106.——Regulating Speed of Motor Vehicles.—Legislative restrictions upon the speed of motor vehicles in streets held not to preclude a city of the second class from imposing further restrictions.—Christensen v. Tate, Neb., 128 N. W. 622.

107.——Use of Streets.—The city of Chicago, owning only an easement in the streets in the School Section addition, held not empowered to require abutting owners to obtain permits to use the space underneath the sidewalks adjoining their property.—Illinois Trust & Savings Bank v. City of Chicago, Ill., 93 N. E. 167.

108.——Use of Streets.—Where an abutting owner owns the fee in a street the city cannot require him to pay rent for use of a subway constructed by him under the surface of the street.—Tacoma Safety Deposit Co. v. City of Chicago, Ill., 93 N. E. 153.

109. **Nuisance**—Maintenance of Dam.—The erection and maintenance of a dam across a natural water course to utilize water power is not a nuisance.—City Water Power Co. v. City of Fergus Falls, Minn., 128 N. W. 817.

110. **Officers**—Knowledge of Law.—Persons dealing with public officers must know the law governing their powers, and act in ignorance thereof at their peril.—Lund v. Board of Com'rs of Newton County, Ind., 93 N. E. 179.

111. **Partition**—Trust Estate.—An application for partition should be denied, where the estate is subject to a trust, the purpose of which would be defeated by its partition.—Ward v. Ward, Mich., 128 N. W. 761.

112. **Partnership**—Principal and Agent.—Where one by his course of dealing with another leads third parties to believe in the existence of a co-partnership, those dealing with the firm under such belief can hold all the apparent members of the firm responsible.—Jansen v. Jacobson, Minn., 128 N. W. 824.

113. **Principal and Surety**—Building Contracts.—Where a building contract provides for the ordering of extra work, the requiring of such extras does not change the contract, so as to release the surety.—City of Fergus Falls v. Illinois Surety Co., Minn., 128 N. W. 820.

114. **Railroads**—Mileage Books.—Where the holder of a railroad mileage book is prevented, by the fault of the railroad company, from exchanging the coupons thereof for mileage tickets, as required thereby, held, that the book becomes a contract of carriage entitling him to carriage without exchanging the coupons for tickets.—Harvey v. Atlantic Coast Line R. Co., N. C., 69 S. E. 627.

115. **Reformation of Instruments**—Mutual Mistake.—A deed will not be reformed for mutual mistake unless the mistake is made clearly to appear by satisfactory evidence.—Dillie v. Longwell, Mich., 128 N. W. 782.

116. **Specific Performance**—Objections to Relief.—Where the price of the land fixed by the contract sought to be specifically enforced was its fair value when the contract was made that the land subsequently increased in value is not sufficient ground for denying specific performance.—Rausch v. Hanson, S. D., 128 N. W. 611.

117.——Verbal Sale of Land.—A contract for sale of land may be specifically enforced against heirs of one to whom the land was conveyed.—Gladville v. McDole, Ill., 93 N. E. 86.

118. **Statutes**—Construction.—There is no presumption that revised statutes are intended to alter the existing law, and they will not be construed to do so, unless it is clear that such was the intent.—In re Lockey's Estate, Minn., 128 N. W. 833.

119. **Taxation**—Incorporeal Rights.—Easements of a right of way and for the construction and maintenance of a railroad track held to be easements appurtenant, and not in gross, and, as such, assessable to a dominant estate as provided by Comp. Laws, secs. 3825, 3850.—Stansell v. American Radiator Co., Mich., 128 N. W. 789.

120.——Infant's Failure to Redeem.—An infant who fails to redeem from a tax sale within the time fixed by law, held to lose his right to redeem.—Jones v. Shull, N. C., 69 S. E. 498.

121.——Presumption of Regularity.—When the board of revision certifies tax duplicates to the receiver of taxes for collection, it will be presumed that all the preliminary steps in the valuation of property have been taken.—Elliot v. City of Philadelphia, Pa., 78 Atl. 107.

122.——Right to Remedy.—One having neither title to nor right to redeem land cannot sue in equity respecting it.—State v. Mathews, W. Va., 69 S. E. 644.

123.——Tax Sale.—Where a county treasurer sells one tract for taxes levied upon another, the tracts being separately assessed and taxed, the sale will subrogate the tax purchaser to the lien of the public.—Wyman v. Searle, Neb., 128 N. W. 801.

124.——Tax Title.—Complainant's father having contracted to convey certain land to a corporation, and the corporation having subsequently acquired a tax title and used the land for many years for its business, complainant after his father's death could not maintain a bill to redeem.—Cowley v. McGregor, Mich., 128 N. W. 739.

125. **Telegraphs and Telephones**—Exchange Facilities.—The default of a party to whom plaintiff desired to talk through defendant's telephone of which he was a subscriber, in the payment of toll fees for which such person was at most only secondarily liable, held no justification for defendant's refusal to furnish plaintiff nection.—Osborne v. Reading Cent. Telephone Co., Mich., 128 N. W. 745.

126. **Vendor and Purchaser**—Bona Fide Purchasers.—A purchaser without notice of existing equities may rely upon the record chain of title, and is not bound to go outside the record to inquire for it.—Burr v. Dyer, Wash., 111 Pac. 866.

127.——Executory Contract for Sale of Land.—A vendor of land under an executory contract, by suing after forfeiture for the use and occupation of the land, held to have waived any right to recover the value of the crops severed by the purchaser.—Golden Valley Land & Cattle Co. v. Johnstone, N. D., 128 N. W. 691.

128. **Wills**—Suit to Set Aside.—When the only relief that can be had in a suit to set aside a will is to declare it void, the same as would a contest, it is in effect a contest of the will, and must be governed by the rules controlling such contests.—Dibble v. Winter, Ill., 93 N. E. 145.